

APPEAL NO. 030635
FILED APRIL 18, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 13, 2003. The hearing officer determined that the injury the appellant (claimant) sustained on _____, was not compensable because the claimant was not in the course and scope of his employment; that the claimant timely reported his injury; and that because the claimant did not have a compensable injury, the claimant did not have disability.

The claimant appeals the adverse determinations, contending that he was in the course and scope of employment as defined by the 1989 Act. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Much of the evidence was in conflict and had to do with events leading up to the date of injury. It is relatively undisputed that the claimant had been having problems with a coworker and had been accused of threatening a lead man prior to _____. On _____, after the 2:00 p.m. break, the claimant was called into an office, ostensibly about the lead man incident. Present were the claimant, the claimant's supervisor (HV), and HV's supervisor (BrM). What was said was in dispute, but generally the claimant was told to leave the premises, go home, and get a medical certificate as it related to the lead man incident. The claimant refused to do so, either because he wanted to "punch out" or some other reason. The evidence, as set out by the hearing officer, is conflicting as to whether the claimant was fired at that time. There was evidence that the claimant wanted to speak with (BoM) who was the director of human resources. Although in conflict, there is evidence that the claimant again was told to leave the premises and go home and that the claimant again refused. Eventually a security guard was called and the guard's statement was that he asked the claimant to leave the premises and the claimant refused to do so. Eventually the police were called to escort the claimant off the premises. According to the police report, the police arrived at 4:00 p.m. and the officer told the claimant "he had to leave the building." The report indicates that the claimant "tried to walk past the officer," who took him by his upper left arm to walk him to the exit, when the claimant "jerked his arm away from the officer's grasp." It was the ensuing hold that caused the claimant's injury. Whether the claimant was handcuffed was disputed.

The claimant contends that he was in the course and scope of his employment when he was injured because he was trying to "punch out first" per the company policy." The hearing officer mentioned some access doctrine cases and commented: "This doctrine, however, does not appear to go so far as to cover an employee who is

trespassing and/or is injured while being handcuffed after failing to comply with a legitimate law enforcement command,” citing the dissent in Texas Workers' Compensation Commission Appeal No. 981236, decided July 22, 1998.

Section 401.011(12) defines course and scope of employment as:

an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations.

While arguably the original meeting the claimant had with his supervisor HV, and BrM originated in the work or business of the employer, after the claimant was directed to leave the premises by HV, BrM, the director of human resources, BoM, the security guard, and finally the police, at the behest of the employer, it cannot be said that the claimant's refusal to leave the premises, for whatever reason, were in the furtherance of the affairs or business of the employer. Although the claimant contends he merely wanted to “punch out” in accordance with company policy, his refusal to leave the premises, for some two hours-contrary to the directions of two supervisors, the director of human relations, the security guard, and the police-took him outside of the furtherance of any affairs or business of the employer. An employee cannot disobey the direct order of the employer and, when that action results in an injury, claim that he was in the furtherance of the affairs or business of the employer. As such, he has deviated from the course and scope of employment and any injury sustained is not compensable. We hold that the deliberate defiance of the claimant in refusing to leave the premises in spite of numerous requests, and which required that the police be called, placed the claimant outside of the course and scope of his employment.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ROBERT PARNELL
8144 WALNUT HILL LANE, SUITE 1600
DALLAS, TEXAS 75231.**

Thomas A. Knapp
Appeals Judge

Terri Kay Oliver
Appeals Judge

Edward Vilano
Appeals Judge